

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

W.P.(C).No. 28928 of 2006(R)

PETITIONER:

K. MOHANAN, S/O.KUMARAN,
AGED 45 YEARS, MEMBER, P.T.A., GOVT.H.S.S,
PERUNGALAM, MUNDROTHURUTH, RESIDING AT
POOPPANIL PUTHEN VEEDU, PATTAMTHURUTH P.O.,
PERINAD, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN
SMT.REKHA VASUDEVAN

RESPONDENTS:

1. MUNROTHURUTH GRAMA PANCHAYATH
REP.BY ITS SECRETARY, MUNDROTHURUTH, KOLLAM.
2. THE ASSISTANT ENGINEER,
P.W.D.ROADS SUB-DIVISIONS, KUNDARA.
3. THE EXECUTIVE ENGINEER,
P.W.D. ROADS SECTION, KOLLAM.
4. THE DISTRICT COLLECTOR, KOLLAM.

R4 BY GOVERNMENT PLEADER SRI.MATHEW G.VADAKKEL
R1 ADV. SRI.M.V.THAMBAN
SRI.K.V.ANIL KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.A5-1124/05 DT 9.10.2006 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF THE MASS PETITION DATED 23.10.2006.

EXT.P3: COPY OF MASS PETITION SUBMITTED BY THE PARENTS AND THEIR CHILDREN BEFORE THE DISTRICT COLLECTOR DT. 24.10.2006.

EXT.P4: COPY OF THE PETITION SUBMITTED BY THE BLOCK PANCHAYATH MEMBER TO THE DISTRICT COLLECTOR DT.25.10.06.

EXT.P5: COPY OF THE MATHRUBHUMI DAILY NEWS DT. 10.10.06.

EXT.P6: COPY OF THE MANORAMA DAILY NEWS DT.26.10.06.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF THE LETTER DATED 14.11.2006 OF THE PRESIDENT PTA, GOVT.HSS PERUNGALAM.

EXT.R1(b): COPY OF THE CERTIFICATE DATED 14.11.2006 OF THE PRESIDENT PTA, GOVT. HSS PERUNGALAM.

EXT.R1(c): COPY OF THE RESOLUTION NO. VIII (2) DATED PASSED BY THE PANCHAYAT.

EXT.R1(d): COPY OF THE PANCHAYAT'S LETTER NO. A8/01/05 DATED 26.10.2006.

EXT.R1(e): COPY OF THE REVISED ORDER NO.A5-1124-05 DATED 2.11.2006 OF THE EXECUTIVE ENGINEER.

EXT.R1(f): COPY OF THE ORDER NO.KS-2/2002 DATED 20.10.2006 OF THE ASSISTANT ENGINEER.

TRUE COPY

P.A.TO JUDGE

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 28928 of 2006

Dated this 16th day of November, 2006

JUDGMENT

A resident of Pattamthuruth in Mundrythuruth Grama Panchayat who claims to be a representative of the parents of 67 students studying in Govt. H.S.S. Perringalam Island, is aggrieved by the decision of the first respondent Mundrythuruth Panchayat and the resultant order issued by the 3rd respondent who transferred one ferry boat (country Boat) and two ferry men from Perungalam ferry out of the 2 ferry boats and 4 ferry men to Arinelloor ferry and Konnayil ferry for the purpose of night service. It is claimed that the local residents and students have been depending upon the Government ferry service(country boat) in existence for the last few years for commuting between Pattomthuruth and Perringalam. From the very inception of the Govt. ferry service two boats and 4 ferry men have been provided and two ferry men were put in charge of each boat since the distance between Perringalam and Pattamthuruth is about 1.5.Km and chances of untoward incidents especially in adverse weather conditions were considerable. Ashtamudi lake

is very deep and one bank is not visible from the other bank because of the distance. The petitioner states that the capacity of a country boat is 16 passengers at one time and the journey time for reaching other side is one hour and that 67 students are travelling from Pattamthuruth to Peringalam to reach their school apart from the other passengers in the locality. Considering the journey time and the adverse weather conditions two ferry men per boat is absolutely necessary lest there should be danger to the lives of the passengers. The petitioner refers to an instance when accident could be averted during recent time due to efficient management of two ferry men. Even two ferry men may not be sufficient for managing such incidents, according to the petitioner. While so the 3rd respondent has issued Ext.P1 order dated 9.10.2006. As per that order one of the two boats and two ferry men out of the four were directed to be transferred to Arinallopor ferry and Konnayil ferry for night service. Ext.P2 is a copy of the mass petition submitted before the 3rd respondent on 23.10.2006 in anticipation of Ext.P1 order. On the next day itself the petitioner and the parents of the children submitted another mass petition (Ext.P3) before the District Collector. One

Sri.Pulimootil Rajendran, the Block Panchayat member who is convinced about the grievance of the petitioner and the local residents submitted Ext.P4 before the District Collector. Even though Exts.P3 and P4 have been forwarded to the 3rd respondent (Executive Engineer) for his report, the Malayala Manorama and Mathrubhoomi have reported that Ext.P1 is going to be implemented. Ext.P5 series are the copies of the report in the dailies. Stating these facts and raising various grounds, the petitioner prays that; i). Ext.P1 be quashed, (ii) decision No. VIII dated 26.7.2006 of the first respondent be quashed (iii) issue a writ of mandamus commanding the 4th respondent to conduct a personal enquiry and to take a decision on Exts.P3 and P4 considering the reasons stated in the writ petition.

2. A detailed counter affidavit has been filed on 14.11.2006 by the Panchayat denying the averments in the petition. It is contended that the locus standi of the petitioner to file the writ petition is seriously disputed and that the Parent Teacher Association of the Government Higher Secondary School Peringalam, has not authorised the petitioner to file this writ petition. It is further contended that the petitioner has been set

up by the ferry men viz. Sri.V.D.Chandran and A.Basheer who have been ordered to be transferred under Ext.P1. Ext.R1(a) is copy of the letter dated 14.11.2006 which is issued by the President of the PTA Government Higher Secondary School in this context. Ext.R1(b) is a copy of the certificate issued by the President of the PTA. It is contended that the proposal is to transfer only two ferry men and not the ferry boat. It was by an inadvertent error which crept into Ext.P1 that it came to be stated that one ferry boat along with two ferrymen were transferred. This was because of a doubt regarding the scope of the Panchayat's resolution dated 26.10.2006, a copy of which is produced as Ext.R1(c). But later after Ext.P1 order was issued, the Panchayat clarified by the letter dated 26.10.2006 that the request was only for transfer of two ferrymen and not for transferring a boat. Ext.R1(d) is a copy of the clarification letter. Immediately on receiving Ext.R1(d), the Executive Engineer issued the revised order (Ext.R1(e). Ext.R1(e) will show that neither of the two boats in Perungalam - Pattomthuruthu ferry has been disturbed but only two surplus ferrymen from among the 4 have been transferred to Aninelloor and Konnayil Kadavu. The Assistant Engineer has already issued

the posting order. Ext.R1(f) is a copy of the posting order. The counter affidavit gives details regarding the circumstances under which it was decided to transfer the two ferrymen. The counter affidavit also denies the claim in the writ petition regarding the number of students who are using the ferry boats.

3. After hearing the elaborate arguments of Sri.C.Unnikrishnan, the learned counsel for the petitioner and Sri.M.V.Thamban, the learned counsel for the Panchayat and Sri.Mathew G.Vadakkal, the learned Government Pleader for respondents 2 to 4 (Assistant Engineer, Executive Engineer and the District Collector) I vacated the order directing maintenance of status quo.

4. Having considered the rival submissions in the light of the various documents placed on record, I am of the view that the petitioner is not entitled to have Ext.P1 quashed. However, since Exts.P2, P3 and P4 are pending before the District Collector, it is only appropriate that the District Collector takes a decision on them. Accordingly, this writ petition will stand disposed of with the following directions:

The 4th respondent District Collector will take up Exts.P2, P3 and P4, hear the petitioner and also the functionary of the

first respondent Panchayat and take a decision on those representations at the earliest and at any rate within two months of receiving a copy of this judgment.

PIUS C.KURIAKOSE
Judge

dpk